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By: **Delegate McIntosh**

Introduced and read first time: February 18, 2003

Assigned to: Rules and Executive Nominations

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A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Brownfields - Environmental Restoration and Development**

3 FOR the purpose of providing that certain owners of certain real property that is  
4 contiguous to certain contaminated or potentially contaminated property are not  
5 considered owners or operators of certain contaminated property under certain  
6 circumstances; authorizing the Department of the Environment to impose a  
7 lesser application fee on certain applications to the Voluntary Cleanup Program;  
8 establishing a process for certain incomplete applications to the Program;  
9 authorizing a certain determination by the Department to be transferred to a  
10 subsequent purchaser under certain circumstances; requiring that a certain  
11 determination that is conditioned on certain uses of the property or on  
12 maintenance of certain conditions be recorded by the participant in the  
13 appropriate land records; establishing the Environmental Restoration and  
14 Development Task Force; specifying the membership and duties of the Task  
15 Force; providing for the designation of the Task Force chairman; requiring the  
16 Department of the Environment and the Department of Business and Economic  
17 Development to provide certain staffing; prohibiting a Task Force member from  
18 receiving certain compensation and authorizing the receipt of certain  
19 reimbursement; requiring the Task Force to report to certain persons by a  
20 certain date; providing for the termination of certain provisions of this Act; and  
21 generally relating to environmental restoration and development.

22 BY repealing and reenacting, without amendments,  
23 Article - Environment  
24 Section 7-201(a) and (x)(1)  
25 Annotated Code of Maryland  
26 (1996 Replacement Volume and 2002 Supplement)

27 BY adding to  
28 Article - Environment  
29 Section 7-201(x)(7) and 7-506(f) and (g)  
30 Annotated Code of Maryland  
31 (1996 Replacement Volume and 2002 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - Environment  
3 Section 7-506(a)(2), (b), and (d)  
4 Annotated Code of Maryland  
5 (1996 Replacement Volume and 2002 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - Environment**

9 7-201.

10 (a) In this subtitle the following words have the meanings indicated.

11 (x) (1) "Responsible person" means any person who:

12 (i) Is the owner or operator of a vehicle or a site containing a  
13 hazardous substance;

14 (ii) At the time of disposal of any hazardous substance, was the  
15 owner or operator of any site at which the hazardous substance was disposed;

16 (iii) By contract, agreement, or otherwise, arranged for disposal or  
17 treatment, or arranged with a transporter for transport for disposal or treatment, of a  
18 hazardous substance owned or possessed by such person, by any other party or entity,  
19 at any site owned or operated by another party or entity and containing such  
20 hazardous substances; or

21 (iv) Accepts or accepted any hazardous substance for transport to a  
22 disposal or treatment facility or any sites selected by the person.

23 (7) A PERSON WHO OWNS REAL PROPERTY IS NOT CONSIDERED AN  
24 OWNER OR OPERATOR OF A VEHICLE OR SITE CONTAINING A HAZARDOUS  
25 SUBSTANCE UNDER SUBPARAGRAPH (1)(I) OF THIS SUBSECTION SOLELY BY REASON  
26 OF CONTAMINATION FROM A CONTIGUOUS OR OTHERWISE SIMILARLY SITUATED  
27 REAL PROPERTY IF:

28 (I) THE PERSON DOES NOT OWN THE CONTIGUOUS OR OTHERWISE  
29 SIMILARLY SITUATED REAL PROPERTY;

30 (II) THE PERSON'S REAL PROPERTY IS OR MAY BE CONTAMINATED  
31 BY A RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE FROM THE  
32 CONTIGUOUS TO OR OTHERWISE SIMILARLY SITUATED REAL PROPERTY; AND

33 (III) THE PERSON MEETS THE REQUIREMENTS OF SECTION 107(Q)  
34 OF THE FEDERAL ACT AND ANY REGULATIONS ADOPTED BY THE DEPARTMENT  
35 IMPLEMENTING OR INTERPRETING THE REQUIREMENTS OF THAT SECTION.

1 7-506.

2 (a) To participate in the Program, an applicant shall:

3 (2) Pay to the Department an application fee of \$6,000, UNLESS THE  
4 DEPARTMENT DETERMINES THAT A LESSER FEE WOULD BE SUFFICIENT TO COVER  
5 THE COSTS DESCRIBED IN SUBSECTION (D) OF THIS SECTION.

6 (b) (1) (i) The Department shall notify the applicant in writing, within 60  
7 days after receipt of the application, whether:

8 1. The application, including the applicant's status as a  
9 responsible person or an inculpable person, is approved;

10 2. The application is denied OR INCOMPLETE; or

11 3. The Department has no further requirements related to  
12 the investigation of controlled hazardous substances at the eligible property as  
13 provided in paragraph (3) of this subsection.

14 (ii) If the Department denies the application OR DETERMINES THAT  
15 THE APPLICATION IS INCOMPLETE, the Department shall provide to the applicant the  
16 reasons for its decision in writing.

17 (2) (i) An applicant may resubmit an application within 60 days after  
18 receipt of notice of the Department's decision to deny the initial application OR  
19 DETERMINATION THAT THE APPLICATION IS INCOMPLETE.

20 (ii) The Department shall approve or deny a resubmitted OR  
21 REVISED application within 30 days after receipt.

22 (3) If the Department notifies the applicant that the Department has no  
23 further requirements at the eligible property in accordance with paragraph (1)(i)3 of  
24 this subsection, the Department shall include a statement that this notice does not:

25 (i) Subject to the provisions of § 7-505 of this subtitle, prevent the  
26 Department from taking action against any person to prevent or abate an imminent  
27 and substantial endangerment to the public health or the environment at the eligible  
28 property;

29 (ii) Remain in effect if the notice of no further requirements is  
30 obtained through fraud or a material misrepresentation;

31 (iii) Affect the authority of the Department to take any action  
32 against a responsible person concerning previously undiscovered contamination at an  
33 eligible property after a no further requirements notice has been issued by the  
34 Department; or

1 (iv) Affect the authority of the Department to require additional  
2 cleanup for future activities at the site that result in contamination by hazardous  
3 substances.

4 (d) (1) If the direct costs of review of the application and administration and  
5 oversight of the response action plan exceed [\$6,000] THE APPLICATION FEE, the  
6 Department shall require an applicant or participant to pay to the Department the  
7 additional costs incurred by the Department.

8 (2) If the direct costs of review of the application and administration and  
9 oversight of the response action plan are less than [\$6,000] THE APPLICATION FEE,  
10 the Department shall refund to the applicant or participant the difference between  
11 the costs incurred and the application fee.

12 (F) A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO FURTHER  
13 REQUIREMENTS MAY BE TRANSFERRED TO A SUBSEQUENT PURCHASER OF THE  
14 PROPERTY PROVIDED THAT THE SUBSEQUENT PURCHASER DID NOT CAUSE OR  
15 CONTRIBUTE TO THE CONTAMINATION.

16 (G) (1) IF A DETERMINATION BY THE DEPARTMENT THAT IT HAS NO  
17 FURTHER REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR  
18 ON THE MAINTENANCE OF CERTAIN CONDITIONS, THE PARTICIPANT SHALL RECORD  
19 THE DETERMINATION IN THE LAND RECORDS OF THE LOCAL JURISDICTION WITHIN  
20 30 DAYS AFTER RECEIVING THE DETERMINATION.

21 (2) IF THE DETERMINATION BY THE DEPARTMENT THAT IT HAS NO  
22 FURTHER REQUIREMENTS IS CONDITIONED ON CERTAIN USES OF THE PROPERTY OR  
23 ON THE MAINTENANCE OF CERTAIN CONDITIONS AND THE PARTICIPANT FAILS TO  
24 RECORD THE DETERMINATION IN THE LAND RECORDS IN ACCORDANCE WITH  
25 PARAGRAPH (1) OF THIS SUBSECTION, THE DETERMINATION SHALL BE VOID.

26 SECTION 2. AND BE IT FURTHER ENACTED, That:

27 (a) There is an Environmental Restoration and Development Task Force.

28 (b) The Task Force consists of the following members:

29 (1) three members of the Senate of Maryland, appointed by the President  
30 of the Senate;

31 (2) three members of the House of Delegates, appointed by the Speaker  
32 of the House;

33 (3) the Secretary of the Environment, or the Secretary's designee;

34 (4) the Secretary of Business and Economic Development, or the  
35 Secretary's designee;

36 (5) the Secretary of Planning, or the Secretary's designee;

- 1           (6)     one representative of the Cleanup Coalition;
- 2           (7)     one representative of the Chesapeake Bay Foundation;
- 3           (8)     two representatives of the business community with experience in  
4 brownfields development;
- 5           (9)     one representative of the Baltimore Development Corporation; and
- 6           (10)    one representative from the University System of Maryland with  
7 expertise in the area of brownfields remediation or environmental science, appointed  
8 by the Chancellor.

9       (c)     The President of the Senate and the Speaker of the House shall jointly  
10 designate the chairman of the Task Force.

11       (d)     The Department of the Environment and the Department of Business and  
12 Economic Development shall provide staff for the Task Force.

13       (e)     A member of the Task Force:

14           (1)     may not receive compensation; but

15           (2)     is entitled to reimbursement for expenses under the Standard State  
16 Travel Regulations, as provided in the State budget.

17       (f)     The Task Force shall:

18           (1)     review the recent amendments to the federal Comprehensive  
19 Environmental Response, Compensation, and Liability Act as they relate to  
20 brownfields, including:

21                   (i)     the definition of a "bona fide prospective purchaser";

22                   (ii)    the classification of a bona fide prospective purchaser as not an  
23 owner or operator for purposes of "responsible person" status; and

24                   (iii)   the imposition of a windfall lien on a bona fide prospective  
25 purchaser.

26           (2)     examine the consequences of enacting State brownfields legislation  
27 similar to the amendments discussed in paragraph (1) of this subsection;

28           (3)     examine the consequences of including properties under active  
29 enforcement as eligible properties under the State Voluntary Cleanup Program;

30           (4)     examine the consequences of providing liability protections to  
31 economic development corporations and counties that take ownership of  
32 contaminated or potentially contaminated sites;

1           (5)       examine methods by which a Program participant that received a no  
2 further requirements determination conditioned on certain uses of the property could  
3 apply for and receive a revised no further requirements determination based on  
4 different uses of the property;

5           (6)       examine the consequences of providing for focused site cleanups,  
6 including limited liability protection for such cleanups, that are limited to specific  
7 types of contamination or specific portions of the property;

8           (7)       examine the consequences of authorizing economic development  
9 corporations to act as a lender under the Maryland Clean Water Revolving Loan  
10 Fund; and

11          (8)       examine potential sources of increased funding for State brownfields  
12 programs.

13          (g)       The Task Force shall report its findings and recommendations to the  
14 Governor and, subject to § 2-1246 of the State Government Article, the General  
15 Assembly on or before December 31, 2003.

16          SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 June 1, 2003. Section 2 of this Act shall remain effective for a period of eight months  
18 and, at the end of January 31, 2004, with no further action required by the General  
19 Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.